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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Concluding observations on the seventh periodic report of Turkey

Addendum

Information provided by Turkey in follow-up to the concluding observations*

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* The present document is being issued without formal editing.

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Recommendation 15 (c) (see CEDAW/C/TUR/CO/7, para 15 (c))

1. In accordance with its international obligations and national legislation, Turkey strictly adheres to the principle of non-refoulement. Turkey's open door policy towards those fleeing the conflict region since 2011 is the most significant indicator in that regard. Turkey is hosting more than 3.5 million Syrians.

2. Nearly 215,000 people are accommodated in 21 temporary shelters. Also, over 100,000 Turkmen who fled from Syria are accommodated in 9 separate camps.

3. Considering the conditions of the women victims requesting protection from Turkey, expert personnel (social workers, psychologists etc.) accompany and give priority to them during all their procedures.

4. Coordination is ensured with all relevant public institutions and organizations to meet the needs for protection and sheltering.

5. In cooperation with the Ministry of Family and Social Policies (MoFSP), Disaster and Emergency Management Authority (AFAD), Ministry of Interior Directorate General of Migration Management, "The Working Group on Gender-Based Violence" was set up to meet monthly with representatives from UNFPA, UNICEF, UNHCR and other relevant UN agencies. The working group shares the problems encountered on the ground, offers solutions to them and discusses, the activities conducted and planned by relevant institutions in respect of Syrians. A booklet titled "Standardized Working Procedures for Gender-Based Violence" was prepared in a format of a brochure by the Group for the use of UNHCR, inter-governmental organizations, NGOs and institutions and relevant staff who offer assistance to asylum seekers/refugees as well as to other individuals in their respective field of interest.

6. "Humanitarian Assistance Programme on Combating and Response to Gender-Based Violence", prepared to enhance capacity of relevant personnel to respond to gender-based violence, has been carried out between April 2013–June 2015 in cooperation with the MoFSP, AFAD and UNFPA.

7. In addition to trainings for personnel, meetings are held to raise awareness of the Syrian women about gender-based violence as well as early and forced marriages.

8. Brochures on human trafficking, early and forced marriage, violence etc. and application mechanisms in case of violence or witnessing violence are prepared in Turkish and Arabic; and delivered to camps and provinces densely populated by Syrians.

9. Women under temporary protection equally benefit free of charge from services offered to Turkish nationals by Violence Prevention and Monitoring Centres (VPMC) and accommodate free of charge at women's shelters affiliated to the MoFSP in case of violence under the Law No. 6284 on Protection of Family and Prevention of Violence Against Women.

10. In addition to that Law, the term "*persons with special needs*" defined under Law No. 6458 on Foreigners and International Protection also covers "the victims of torture, rape or other serious psychological, physical or sexual violence"; and adequate treatment shall be provided to them in order to eliminate the damage caused by such actions. Also, the Law and the Regulation on Temporary Protection include the provision on access to education, health and labour market with respect to aid and services.

11. All forms of aid and support shall be provided free of charge for those with special needs as far as possible. The Law No. 6284 states that preventive and protective measures shall be taken immediately for the victim of violence and that

adequate measures shall be taken for those considered as a potential victim of human trafficking under the relevant legislation.

12. Pursuant to the relevant legislation, legal aid shall be provided to those applicants and holders of international protection status who are unable to afford the attorney fee. In addition, they can benefit from the counselling services provided by NGOs.

13. The Project titled "Support to the Improvement of Legal Aid Practices for Access to Justice for All in Turkey (SILA)" aims to enhance legal aid services in Turkey and particularly to improve professional capacity of lawyers assisting the disadvantaged groups and the Syrian population in Turkey. In addition, "the Human Rights Centre and Refugee Rights Working Group" was established within Union of Turkish Bar Associations.

14. In December 2017, "Workshop on International Refugee Law and Protection of Refugee Women" was organized for women's shelters directors. The workshop discussed the legal framework of the international protection in Turkey, general perspectives of the international refugee law, protection mechanisms against human trafficking and problems on the ground.

15. For the purpose of achieving uniformity in practice, the MoFSP prepared the Guidelines for Works and Procedures with regard to Foreign Women Victims of Violence and distributed them to 81 Provincial Directorates.

Recommendation 33 (b) (see CEDAW/C/TUR/CO/7, para 33 (b))

16. Turkey has put in force necessary legal and other measures to protect the victims against the perpetrators. By submitting an application under the Law No. 6284, the woman victim may seek before the Court that one of the preventive injunction orders listed in Article 5 is granted against the perpetrator of violence. In case the perpetrator violates the injunction order issued against him, he shall be subject to 3 to 10 days of coercive imprisonment depending on the nature and severity of the violated measure even if the act constitutes another crime. In any subsequent recurrence, the period of coercive imprisonment shall be between 15 to 30 days.

17. In case women victims are exposed to physical violence committed by their antecedents or descendants, spouse, brother/sister, no complaint is sought and investigation is launched ex-officio pursuant to Article 86 of the Turkish Criminal Code (TCC). Without any need for a complaint, ex-officio investigation is carried out against any person who threatens a woman victim or her relative to commit an attack against life, physical or sexual integrity.

18. Although psychological violence is not defined as a separate criminal act under domestic law, it is sanctioned and regulated as crime of threat in Article 106 and crime of blackmailing in Article 107, use of force in Article 108, deteriorating individuals' peace and order in Article 123 of TCC.

19. Stalking is regulated as a crime in Article 123 entitled "deteriorating peace and order of individuals" of the TCC.

20. Physical violence is sanctioned as a crime in Article 81 entitled "Voluntary manslaughter", Article 86 entitled "Intentional injury", Article 87 entitled "Aggravated Injury by Consequences", the Article 96 entitled "Torment", Article 108 entitled "Use of Force" and Article 232 entitled "Ill Treatment" in TCC.

21. Sexual violence is defined as a crime in Article 102 entitled "Sexual assault", in Article 103 entitled "Sexual abuse of children", in Article 104 entitled "Sexual intercourse with minors", in Article 105 entitled "Sexual harassment" and in Article 109 entitled "deprivation of freedom" of TCC.

22. Sexual violence against the spouse also constitutes a crime. Crime against the spouse is subject to complaint of the spouse in Article 102 of TCC. In case of filing complaint by the spouse, the perpetrator may be imprisoned accordingly. Due to lack of any specific legal regulation with regard to the former spouse or partner; the perpetrator shall be punished ex-officio pursuant to the general provision of the article.

23. The crime of sexual abuse is defined in Article 103 paragraph 1 of TCC. According to this Article sexual attempts against children under 15 or against those attained the age of 15 but lack the ability to understand the legal consequences of such act, abuse of other children sexually by force, threat or fraud are accepted as sexual abuse and the perpetrator shall be imprisoned between 8 to 15 years.

24. The provision of annulment of marriage due to act of threat is regulated in Article 151 of the Turkish Civil Code. Forced marriage is not regulated as a distinct offense in TCC. However, sexual acts as a result of forced marriage are considered within the scope of sexual violence and may correspond to offenses regulated in Articles 102, 103 and 105 of the Law. In addition, even if there is not a sexual act, the crime of deprivation of freedom may arise with respect to the concrete case pursuant to Article 109 of the Law.

25. Despite nonexistence of a separate crime of female genital mutilation defined in TCC, the crime of felonious injury in Article 86 and "aggravated injury by its consequences" in Article 87 cover acts of female genital mutilation. The provision "A person intentionally giving harm or pain to another person or commits an act which may lead to deterioration of health or mental power of others, is imprisoned between 1 to 3 years" in Article 86, covers the acts of female genital mutilation. Also, if the act of felonious injury results with continuous weakening or loss of any of the senses or organs and loss of reproductive potential of victim, the punishment shall be increased in accordance with Article 87.

26. Forcing a person to abortion is regulated as a crime in Article 99 entitled "Causing Abortion" in TCC. Also Article 101 entitled "Sterilization" defines sterilization without consent of the person as a crime.

27. Aiding and abetting, participation, encouragement to commit crime is regulated in TCC and these regulations are applicable to all types of crimes. Also, a person who uses another person as an instrument for the commission of a crime remains culpable as the perpetrator. The penalty of a person who uses person(s) as an instrument who lacks the capacity of acting with fault shall be increased by one–third to one-half (Article 37). Furthermore, the penalty of a person shall be increased if the victim is lacking criminal capacity and the crime was committed by the motivation of honour. A person who incites another to commit an offense shall be subject to the penalty appropriate to the offense that is committed. Where there is incitement to offend by using influence arising from a direct-descendent or direct-antecedent relationship, the penalty of the instigator shall be increased by one-third to one-half. Where there is incitement of a minor, a direct-descendant or direct-antecedent relationship is not necessary for the application of this paragraph (Article 38).

28. In addition to the above, the "Third National Action Plan on Combating Violence Against Women (2016–2020)" entered into force. The Action Plan aimed to make improvements in 5 main areas including Legislative Amendments, Awareness-Raising and Transformation of Social Attitudes, Delivery of Protective and Preventive Services and Empowerment of Victims of Violence, Organization and Implementation of Healthcare Services, Inter-Agency Cooperation and Policy Development.

Recommendation 33 (c) (see CEDAW/C/TUR/CO/7, para 33 (c))

29. The Law No. 6284 defines "violence" and regulates "protective and preventive injunction orders" having the quality of "emergency protection orders".

30. If a person applies to the authorities on the grounds of gender-based violence notwithstanding the venue of the incident (home/family, work place, public space etc.), he/she can benefit from the protective and preventive injunction orders under the Law. The authorities may rule on protective or preventive injunction order for the victim of violence ex-officio without seeking any request.

31. Request for injunction orders can be submitted before the judge, the local administrative authority, or the law enforcement unit of the jurisdiction, whichever is accessible in the shortest and easiest possible manner. Injunction orders may be issued out of working hours, at weekends and holidays.

32. Preventive injunction order is granted without any delay. In urgent cases, the injunction orders of "Providing an appropriate accommodation to her, including accompanying children if necessary, in the same place or in another place" and "In case of life threatening situation, putting under temporary protection at request or ex-officio" can be issued for the victim of violence by relevant law enforcement authorities.

33. In urgent cases, the injunction orders of "Not involving in speech or acts containing threats of violence, insults, humiliation or belittlement towards victims of violence", "Leaving the family residence or from his current location and allocation of family residence to the protected person", "Not approaching the protected persons, their residence, school and work place", "If necessary, the protected person should not approach his children, even if not victim of violence, while keeping their personal relationships with relatives and witnesses" may be issued against the perpetrator by relevant law enforcement authorities. Decisions can also be taken ex-officio if required.

34. If "changing identifying information" and confidentiality orders are issued, due activities are carried out under the coordination of VPMC and the information about the person is kept confidential at the public institutions and organizations, banks, healthcare institutions and all similar registries.

35. For the purpose of effective, swift and coordinated implementation of confidentiality orders issued in favour of an individual, MoFSP, the Ministry of Justice and Ministry of Interior created a common inter-institutional database to effectively monitor the data on violence against women, in compliance with the privacy policy, as included in the Third National Action Plan on Combating Violence against Women.

36. In cooperation with the relevant Ministries, integration activities are maintained with various sectors including education, health, social security and banking.

37. Thus, necessary procedures will be implemented via information systems without delay or physical submission of confidentiality order ruled by courts to the relevant institution registry, processing and protection activities.

38. The integration of the protective and preventive injunction orders issued under the Law No. 6284 between National Judiciary Informatics System (UYAP) system and the MoFSP has been completed and the injunction orders ruled by the courts are now submitted over the data system to the VPMCs and 81 Provincial Directorates of the MoFSP within the same day.

39. The presence of Specialized Service Units is of great significance for efficient implementation of relevant legislation. Within this scope, specialized institutional

mechanisms such as 257 Family Courts, "Domestic Violence Investigation Bureaus" under the Public Prosecutor's Office, "Department on Combating Domestic Violence and Violence against Women" under the Directorate of Public Security Branches of 81 Provincial Security Directorates, "Child and Women Sections" within the Provincial Gendarmerie Commands, VPMCs available in 73 provinces carry out necessary measures for efficient protection of victims of violence by providing risk assessment-oriented service.

40. Under the Law No. 6284, one of the efficient tools used for elimination of recurrence of violence and acts of violence against women resulting in death is the monitoring of the protected person, the perpetrator or potential perpetrator of violence through technical tools and methods.

41. Currently, a pilot scheme of electronic bracelet is implemented in cooperation with the Ministry of Justice, Ministry of Interior and MoFSP. In this system, the victim of violence is given "a victim unit" and the perpetrator is tagged with an "electronic bracelet", and they are simultaneously monitored by Electronic Monitoring Centre on a 7/24 basis. In case of violation, the victim is protected with the intervention of the relevant law enforcement unit. Special attention should be paid while using this system in life threatening situations and frequent recurrence of violation.

42. The system of surveillance through technical methods is implemented in most populous cities, namely Ankara, Izmir, Istanbul, Bursa, Gaziantep and Antalya; and it is planned to be extended to all provinces in the following years.

43. "Women Support Application (KADES)", a smartphone application aimed for women victims, is activated and available for download on virtual stores. This application is developed to allow victims or potential victims of violence to reach and get assistance over "155" police hotline and "156" gendarmerie hotline. The law enforcement and patrol squad nearest to the victim called for help through KADES Application is deployed for intervention. In case of need, victims are referred to VPMCs and are provided with psycho-social, legal and economic support.

44. Pursuant to the Law No. 6284, in case of violence or risk of violence, every individual can report such a case to the authorities. Public officials receiving this report are obliged to fulfil their duty within the scope of the Law without any delay and inform the authorities about other necessary measures. According to the provisions under the Regulation on the implementation of the Law No. 6284, public institutions, organizations and public professionals informed about the violence or risk of violence are obliged to report the situation immediately to the authorities.

45. Under the Law, the injunction order is issued upon request of the concerned or upon submission by MoFSP, law enforcement forces or the public prosecutor. Request for injunction decisions can be submitted before the judge, the local administrative authority, or the law enforcement authority, whichever is accessible in the shortest and easiest manner. The public official receiving the application or report on an act of violence against women decides upon necessary protective and preventive injunction orders for the victim of violence.

46. The act of a public official failing to fulfil the necessary protective and preventive injunction order constitutes a professional misconduct. Professional misconduct is prosecuted through judicial channels separately from the disciplinary process for the actions and proceedings of the public official which constitute an offense.

47. In case of injury or death of the victim of violence resulting from the negligence of law enforcement authority or other public officials in implementation of the injunction orders, the civil servant is held responsible primarily for the crimes defined

in TCC Article 83, "Felonious homicide due to failure or negligence" and Article 88 "Felonious injury due to failure or negligence".

48. In addition, if the victim of domestic violence experiences any unfair treatment during services, she may apply to the Ombudsman free of charge. In case the public officials fail to carry out their duties, it is possible to file a complaint before the employing Institution in order to seek for administrative investigation about them.

49. Women victims may file a claim for material/immaterial compensation against perpetrators pursuant to the tort liability provisions in Article 49 of the Turkish Law of Obligations. The judge decides on the scope and mode of payment of the compensation by considering the exigencies of the situation and the degree of fault. In case of physical injury of a woman victim, treatment costs, loss of earnings, decrease in workforce and losses arising from breakdown of economic future shall be included in the compensation amount.

50. Women victims of violence can also file a claim for material/immaterial compensation against the administration in case of insufficient or absence of a public service. Serious bodily injury or harm to health is not a precondition for the victim woman to file this lawsuit. Violation of individual rights is sufficient to file full remedy action.

51. Draft Law on Judicial Support and Victim Services envisages financial assistance to vulnerable groups of crime victims and victims of violence against women. With the entry into force of the Draft Law, Directorates on Judicial Support and Victim Services are foreseen to be established throughout 139 provinces and districts.

Recommendation 33 (f) (see CEDAW/C/TUR/CO/7, para 33 (f))

52. "183 Social Support Hotline" operating under the MoFSP providing service in Turkish, Arabic and Kurdish on 24/7 basis is free of charge. 183 Hotline serves as psychological, legal and economic counselling for women and children victims of violence or under risk of violence; and informs these persons about their rights and institutions. In addition, reports are received in order to prevent negligence, abuse and violence or custom and honour killings cases and the emergency intervention team and/or the law enforcement officials are informed to respond to the case. Activities are carried out to strengthen service delivery capacity of the 183 Social Support Hotline in combating violence against women.

53. For hearing-impaired citizens, it is possible to have a video call on a separate line. In addition, they can send free SMS, and the call centre personnel provides the necessary guidance and referral services by responding to them.

54. Also, women exposed to violence and witnesses of violence can report to law enforcement officers via 155 (police) and 156 (gendarmerie) hotlines free of charge on a 24/7 basis. The "112" Emergency Call Centre, is reachable by those suffering any injury or health problem due to domestic violence. It is also the preliminary hotline to respond the calls for help against violence from the "155" and "156" hotlines in many cities thanks to recent restructuring process. In addition, efforts are maintained to create "Single Emergency Call Number" in Turkey and it has been already expanded to 25 provinces. On these hotlines, privacy rules are respected and the staff is trained within this scope.

55. In addition, 157 Hotline for Victims of Human Trafficking operates on a 24/7 basis, delivers services in Russian, Romanian, English and Turkish, and is free of charge. Staff trained on human trafficking deliver service on this hotline.

56. The Gelincik Project implemented by Ankara Bar Association provides legal aid to women and children victims of violence on a 24/7 basis. Also, psychologists and social workers provide assistance at this centre.

Recommendation 37 (c) (see CEDAW/C/TUR/CO/7, para 37 (c))

57. Turkish nation is not a juxtaposition of communities or groups. It is rather an amalgamation of individuals from various backgrounds. Thus, it is composed of equal citizens irrespective of their language, race, colour, ethnicity, religion or any other such particularity, whose equality before law is enshrined in the Constitution and other legislation in force. Respect for human rights is an inviolable principle of the Turkish legal system under constitutional protection. Certain forms of discrimination are subject to criminal sanction in form of imprisonment.

58. Although not mentioned throughout the Concluding Observations of the CEDAW, the internationally acknowledged terrorist labelling of PKK should be taken into consideration. PKK is also enlisted as a terrorist organization by many countries, particularly USA and the EU. Turkey exerts its legitimate right to protect its citizens also from the criminal acts of the terrorist organization PKK.

59. It should be noted that Turkey is faced with severe and multiple security challenges emanating from terrorist organizations, including PKK. In this scope, swift and effective measures are indispensable not only for security considerations but also to protect its democracy and the rights and freedoms of the Turkish people. The Turkish Government emphasizes that it is the top priority in Turkey to strike a proper balance between fundamental freedoms and security needs while taking appropriate measures to counter security threats.

60. As regards the expression of "human rights violations" in 37-b of the Concluding Observations of CEDAW Committee, Turkey considers such expression as "violation claims" with regard to operations of our security forces. Turkey also considers it necessary to recall the following points regarding the observation 37-c of the CEDAW Committee:

61. Existing national mechanisms responsible for investigating the claims are efficient, unbiased, transparent and vested with public confidence. Therefore, there is no need for a special investigation mechanism to be established with international support.

62. Pursuant to Article 9 of the Constitution, judicial authority is vested in independent and impartial courts on behalf of the Turkish Nation. Independence of courts is safeguarded in Article 138 of the Constitution.

63. It is stated in Article 160 of the Criminal Procedure Code that as soon as the public prosecutor is informed, or otherwise becomes aware that a crime has been committed, she/he shall immediately initiate investigation to make a decision on whether or not to file public proceedings. Also, pursuant to the Law, investigation may be carried out against the law enforcement officers who misuse or neglect to execute oral/written demands/orders of the public prosecutors. They are criminally liable under the Law on Adjudication of Civil Servants and Other Public Employees.

64. Also, the Law No. 6713 on the "Establishment of the Law Enforcement Monitoring Commission" entered into force on 20th May 2016.

65. The Ombudsman Office, investigates human rights violations and applications relating to the functioning of the administration with a human rights oriented notion of justice.

66. As a result of investigations and inquiries regarding applications received under merged File No.2015/5629 claiming that "children's right to education was prevented

due to the curfew imposed by civilian authorities in some provinces and districts in Eastern and Southeastern Anatolia and the calling for teachers to attend in-service training while the school year was ongoing";

67. The Ombudsman decided on the following:

"The separatist terrorist organization committed terrorist attacks which saw a significant increase since July 2015 and targeted the fundamental human rights, particularly the right to life, right to freedom and security, inviolability of residence, right to property, freedom of travel, freedom of thought and faith and right to education, attacked schools, ambulances, police stations, sanctuaries and public buildings, aiming to prevent the civilians from receiving fundamental public services, attempted to declare self-governance in the region by force of arms; and therefore no contradiction to law was identified because it is among a State's positive obligations to give priority to protection of the right to life of the students and teachers given the severe circumstances regarding the public order and safety across the region."